

CHAPTER 22

SPECIAL OPERATIONS

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INTRODUCTION

Special Operations (SO) are characterized by the use of small units involved in direct and indirect military activities that are generally of an operational or strategic objective. These missions may be conducted in time of war or peace. Special Operations Forces (SOF) involvement in an operation normally begins before the introduction of conventional troops and ceases long after conventional forces have left the theater. SOF are generally regionally focused and SOF personnel typically possess the language skills, cultural familiarity and maturity necessary to participate in the often times politically sensitive SO. SO are inherently joint and differ from conventional operations in degree of risk, operational techniques, modes of employment, independence from friendly support and dependence on detailed operational intelligence and indigenous assets.

It should be apparent to the judge advocate supporting SOF that the legal risks associated with SO are often commensurate with the operational risks. "High adventure" SO missions are legally intensive operations. Judge advocates assigned to SOF must be familiar with a wide variety of laws and regulations relevant to SO. Moreover, SOF is an army within an army. It has its own culture, with accompanying acronyms, tactics, traditions, unique planning techniques, unit configurations, and command structure.

HISTORY

Special Operations Forces in the United States enjoy a long and illustrious tradition. Time and time again, SOF have contributed to the overall accomplishment of our nation's political and military objectives in ways that far exceed its organic assets. This ability to perform at this exceptionally professional level can largely be attributed to the nature of SOF missions, the highly trained, skilled and motivated operators in SOF, and specialized equipment.

In respect for the SO skills of the early native Americans, the U.S. Army Special Operations Command (USASOC) and the U.S. Army Special Forces unit patches are in the shape of an arrowhead. The Special Forces branch insignia consists of two crossed arrows, representing the craft and stealth of the early American warriors. Numerous "Indian Scouts" distinguished themselves on the battlefield and earned the Congressional Medals of Honor.

During the French and Indian War, Major Robert Rogers successfully led a group of early American unconventional warriors, known as "Roger's Rangers." His techniques and maxims are studied today by modern SOF personnel. During colonial times, Francis Marion, the "Swamp Fox," conducted significant guerrilla raids on British forces stationed in South Carolina. In the American Civil War, Colonel John Singleton Mosby of Virginia organized a force of 300 volunteers to operate behind enemy lines. COL Mosby's Confederate raiders cut off Union Army lines of communications, destroyed logistics and replacement trains and Union headquarters.

Modern SOF trace their origin to World War II. At the outset of hostilities, a New York Wall Street attorney by the name of William "Wild Bill" Donovan approached his long time friend, President Roosevelt, with a proposition. William Donovan, a Congressional Medal of Honor winner from World War I, was convinced that a small organization of highly trained and motivated individuals would be very successful at the strategic level. The President agreed and the Office of Coordinator of Information (COI) was established with COL Donovan at the helm. In June of 1942, the COI became the Office of Strategic Services (OSS) and participated in sabotage, espionage, subversion, unconventional warfare and propaganda against both Japanese and German forces. The OSS was the forerunner to both the U.S. Army Special Forces and the U.S. Central Intelligence Agency.

In addition to the OSS, the 1st Special Service Force, the "Devil's Brigade," was formed as a combined Canadian and U.S. special warfare unit. The name Special Service Force was an attempt to conceal the combatant nature of the unit. With its name and red guidon, the unit tried to pass itself off as an organization involved in service and support operations. However, the cover did not last long. They were deeply feared by the Germans. The USASOC red unit patch of today is a replica of the 1st Special Service Force insignia.

Similar to the U.S. Army, modern Naval Special Warfare (NAVSPECWAR) finds its genesis in the SO of World War II. Scouts and Raider teams were formed to guide Marines and soldiers ashore during amphibious landings. The Chief of Naval Operations formed the first Underwater Demolition Teams (UDT) in 1943. UDT were to clear manmade and

natural obstacles from the shoreline before amphibious operations. In the European theater, UDT members approached obstacles from small canoe-like boats rather than by swimming. As a result of the successes in Europe, UDTs were formed in the Pacific as well. However, the Pacific UDTs approached their target by swimming. The first of these teams were known as the “naked warriors” because of their lack of equipment. The earliest teams did not even use fins.

UDT were primarily involved in shoreline reconnaissance and demolition and operated during daylight hours under the cover of Naval Gunfire. The NAVSPECWAR commando missions evolved primarily from the OSS. In fact, it was an Army Lieutenant assigned to OSS who designed the very successful Lambertson Amphibious Respiratory Unit (LARU), a closed circuit breathing apparatus. OSS swimmers were used to mine enemy ships and to support undercover operations on shore.

Air Force Special Operations (AFSOC) Forces also trace their lineage to World War II. The U.S. Army Air Corps 1st Air Commando Group, “Project 9,” under the command of General Henry “Hap” Arnold served in Burma. The 1st Air Commando Group was used to reopen the Burma Road. The 801st Bombardment Group, “Carpetbaggers” operated in Europe. The 801st dropped OSS Jedburgh teams, intelligence agents, guerrilla warfare teams, supplies, weapons, and munitions to French resistance groups behind enemy lines.

As a general rule however, SOF was downsized following World War II at a rate higher than that of conventional forces. The OSS was disbanded after World War II. The U.S. Army organized its first Special Forces Group, the 10th Special Forces Group, in 1952. COL Aaron Bank was the Group’s first commander. He had been an OSS operative in World War II. In 1953, the 77th Special Forces Group was established and began conducting Mobile Training Team missions into Southeast Asia. Naval Special Warfare all but disappeared after World War II. However, there were a few significant SO during the Korean War. Notably, the heroic small unit activities of U.S. Navy Lieutenant Eugene Clark and his men prior to the Inchon invasion serve as an example of the value of SO. There were some USAF SO in the Korean War as well.

After the Bay of Pigs incident, President Kennedy determined that the United States needed an ability to project flexible military force into situations that were short of war. He directed DoD to expand its unconventional warfare capabilities. UDT were reborn, and the President personally established the Green Beret as the official headgear of the U.S. Army Special Forces. The commander of UDT-21, Bill Hamilton was selected to head up the newly formed U.S. Navy SEAL team. SEAL is an acronym that stands for Sea, Air And Land. SEALs not only conduct hydrographic reconnaissance missions like UDT, but have become involved in special warfare activities inland as well.

The acts of courage displayed during the Vietnam war by SOF are legendary. The American people became enamored with SOF and their capabilities and exploits were celebrated in movies and songs. The war in Southeast Asia seemed particularly suited for SOF. Because of this, some historians suggest that the blame for the “failure” of American efforts in Vietnam was placed on SOF more so than perhaps other units. There was, according to some, a distrust and dislike for SOF by the conventional military establishment. Once again, the military experienced a significant drawdown after the war, but the reductions in SOF were even higher than with conventional units. Being a member of SOF was not generally career enhancing for military officers.

In 1979, SOF was once again in the spotlight as a result of the failed hostage rescue attempt that became known as Desert One. When the U.S. Embassy in Iran was taken over by radical students, President Carter ordered the formation of an SO Task Force to attempt to rescue the American hostages being held in the embassy. A team of Army commandos, lead by U.S. Army COL Charlie Beckwith, were to be carried to a site near the embassy by Navy H-53 Minesweepers, commanded by a Marine. Once the hostages were rescued, these same helicopters were to be used to evacuate the rescued hostages and commandos after the assault on the embassy.

On the fateful night of the operation, eight helicopters left the deck of the USS NIMITZ carrying the commandos. In route, the Task Force hit a dust storm. One helicopter was forced to land because of engine trouble. One lost its ability to navigate because of equipment failure and had to turn back. The plan called for the helicopters to refuel at a site in the desert known as Desert One. Tragically, one of the helicopters collided with a USAF C-130 refueling aircraft at the refueling site. Both the plane and helicopter burst into flames, killing and injuring several task force members. The mission had now reached one of its abort criteria. The Task Force was down to five helicopters, and at least six were needed to be able to effectively evacuate the commandos and hostages.

After Desert One, the Holloway Commission was established to examine the incident. Admiral Holloway and his commission determined that SOF was an appropriate response for several reasons. Since the mission was a humanitarian rescue attempt rather than an aggressive military operation, the use of a small SOF was more consistent with the stated purpose. The use of a large conventional force would have appeared more like an aggressive act of war rather than a purely humanitarian rescue operation. The use of conventional forces would have arguably caused more U.S. and Iranian casualties. Although the commission supported the decision to use SOF, it identified several crucial causes of mission failure.

These problems were generally related to command and control and the possible over-concern with operational security (OPSEC). The helicopter squadron was commanded by a Marine Corps Lieutenant Colonel. However, an Air Force General Officer had also been assigned to the Task Force because of his extensive knowledge of Iran. There were some disputes over who was actually in charge of the air portion of the operation. Because OPSEC was critical, the operation was compartmentalized. Most of the operators only know their part in the operation. In the event of compromise, compartmentalization limits the amount of information that makes it into enemy hands. OPSEC was so tight there was no rehearsal before the mission. Because there was no apparent compromise, the OPSEC activities appear to have worked. However, OPSEC made it very difficult to properly coordinate all the moving parts from each separate service.

The commission recommended the creation of a SOF advisory panel and a standing JTF for counterterrorism. The commission believed that if a standing counterterrorism JTF were established, it could be manned with a core of highly trained individuals who would trust each other and work well together. This would facilitate the integration and synchronization of joint SOF and would allow detailed planning without OPSEC concerns. The commission did not condemn the operators for their concern with OPSEC. After all, it appears that the Iranians had no idea the Commandos were coming, and OPSEC therefore worked. The mission was so sensitive, OPSEC was paramount. However, with a standing JTF, the seemingly competing values of OPSEC and coordination could both be preserved without the expense of the other.

In the mid-eighties, some in Congress became concerned that DoD had not implemented much of the Holloway Commission report. There was a perception by some in Congress that absent Congressional involvement, conventional commanders and civilian leaders in DoD would never bring SOF up to the level it needed to be. Some in Congress advocated the establishment of a sixth service, a new SOF branch of the military. However, most believed a better plan was to put together a joint special operations command using the training and recruiting base of the branches of service already in being. As a result, in 1986, Congress passed Public Law 99-661, the Nunn-Cohen Amendment, codified at 10 U.S.C. § 167. The U.S. Special Operations Command was now a reality.

SOF COMMAND STRUCTURE

As a result of 10 U.S.C. § 167, the United States Special Operations Command (USSOCOM) was established. This CINC is unique in that it is the only CINC specifically established by Congress and required by law. DoD could, for example, do away with the Atlantic Command and reorganize its sub-component units. However, DoD does not have the authority to disband USSOCOM. However, Congress realized that if it created a CINCSOC without a separate funding authority, DoD would continue to have tremendous control and the ability to drawdown SOF assets simply by refusing to fund its programs. Therefore, an entirely new budgetary authority, Major Force Program Eleven (MFP-11), was established to fund SOF. Some have observed that USSOCOM is the only CINC with his own “checkbook.” This is important for SOF because MFP-11 funds may only be used for articles and programs with an SO basis or nexus.

USSOCOM is both a supporting and supported command. It is a supporting command in that it is responsible for providing ready and trained SOF to the geographic CINCs. It is a supported command in that when directed by the National Command Authority (NCA), it must be capable of conducting selected SO of a strategic nature under its own command. USSOCOM is commanded by a General and is located at MacDill Air Force Base in Tampa, Florida.

10 U.S.C. § 167(i) explains that SOF are those units which are:

1. Listed in the Joint Capabilities Plan, Annex X (17 Dec 85);

2. Listed in the Terms of Reference and Conceptual Plan for the Joint Special Operations Command (1 Apr 1986);
or

3. Forces designated by the Secretary of Defense (SECDEF).

Each service in turn has its own specific SO command. For the Army, it is the U.S. Army Special Operations Command (USASOC), commanded by a Lieutenant General, at Fort Bragg, NC. The Naval SO command is referred to as the Naval Special Warfare Command (NAVSPECWAR), with a Rear Admiral in charge at Coronado, CA. The U.S. Air Force Special Operations Command (AFSOC) is located at Hurlburt Field, FL and led by a Lieutenant General. These service specific SO commands are responsible for selecting, training and equipping the force. They are also responsible for SO doctrine within their respective services. In the U.S. Army, USASOC is a Major Command (MACOM) and therefore, U.S. Army SOF (ARSOF) is not within the FORSCOM chain of command.

There is also a Joint Special Operations Command (JSOC), a sub-unified command of USSOCOM, which is located at Fort Bragg, NC. This is a joint command which studies special operations requirements and techniques, ensures interoperability and equipment standardization, plans and conducts joint special operations exercises and training, and develops joint special operations tactics.

There are no standing Marine Corps SOF. Marine Corps units are not listed in either of the two SOF designation documents cited in 10 U.S.C. § 167(i). Neither DoD nor the Marine Corps have sought to amend those documents, although both have had the opportunity. There are however certain units of the Marine Corps, along with particular conventional elements of the U.S. Navy and U.S. Air Force, that have been designated “special operations capable.” Special operations capable units are from time to time designated as SOF by SECDEF for specific operations. Many Marine Corps units perform and train to perform special operations type missions. The expeditionary nature of the Marine Corps makes it particularly well suited as a special operations capable force.

U.S. Army Special Operations Forces (ARSOF) include active duty, Army National Guard (ARNG) and U.S. Army Reserve elements. There are five active and two ARNG Special Forces (SF) groups (SFG). SF are often referred to in literature and by the public as the “Green Berets” because of their distinctive headgear. These SFG are under the command of the U.S. Army Special Forces Command Airborne (USASFC(A)), a sub-command of USASOC, also located at Fort Bragg, NC. USASFC(A) is commanded by a Major General, while each SFG is lead by a Colonel. Each of the active SFG has a geographical orientation. SF soldiers study the language and culture of the countries within their area of operations (AOR), and receive training in a variety of individual skills and special skills. These skills include operations, intelligence, communications, medical aid, engineering and weapons. SF soldiers are highly skilled operators, trainers and teachers. Not only must they be capable of performing difficult military missions; they must also be able to teach these skills to foreign militaries and domestic agencies as well.

The Ranger Regiment, commanded by a Colonel, and its three battalions are also ARSOF. Regimental headquarters, along with one battalion, are at Fort Benning, GA. One other battalion is located at Hunter Army Airfield in Georgia, and the final battalion is stationed at Fort Lewis, WA. Members of the Regiment wear the black beret and make up a highly responsive strike force. Ranger units are specialized airborne infantry troops that conduct special missions in support of U.S. national security policies and objectives.

The 160th Special Operations Aviation Regiment, commanded by a Colonel and located at Fort Campbell, KY, provides special aviation support to ARSOF, using specialized aircraft and highly trained personnel. The Civil Affairs/Psychological Operations Command (USACAPOC) is based at Fort Bragg, NC. There are three reserve CA commands, with nine reserve CA brigades. There is one active and two reserve PSYOPS groups. CA units support the commander’s relationship with civil authorities and the civilian population by promoting mission legitimacy. PSYOPS units support operations across the operational continuum to induce or reinforce attitudes and behaviors favorable to the U.S.. The John F. Kennedy Special Warfare Center and School is responsible for training leader development, and doctrine. A Major General commands this Fort Bragg “special operations university.” There are also various support commands within USASOC such as the Special Operations Support Command (SOSCOM) and the Special Operations Chemical Reconnaissance Detachment (CRD).

Because, within ARSOF, SF is the largest piece, has the most judge advocates assigned, and because an SFG is unique in terms of organization, a brief description of an SFG will follow. The group is commanded by a Colonel, with a

Lieutenant Colonel Deputy Commanding Officer (DCO), a Lieutenant Colonel executive officer (XO) and a Command Sergeant Major (CSM) forming the remainder of the command group. The staff is similar to that of a separate infantry brigade. There are three battalions, each commanded by a Lieutenant Colonel, a Group Support Company (GSC), led by a Major, and a Headquarters and Headquarters Company (HHC) commanded by a Captain. There are several detachments and sections within the GSC such as the Military Intelligence Detachment (MI DET), Signal Detachment (SIG DET), Service Detachment (SVC DET) and the rigger section. Each of these detachments are typically commanded by a Captain and usually have company grade UCMJ authority.

Each battalion has a Major XO and a CSM, along with the traditional battalion staff. There are three operational companies, a battalion support company and a battalion headquarters detachment within the battalion. A SF operational company command is a Major position and the company has a SGM rather than a 1st Sergeant. The company Headquarters Detachment is often referred to as a Special Forces Operational Detachment “C” (SFOD C). The operational companies have headquarters detachments (SFOD B). The operational companies are further broken down into operational teams, known as “A” teams or SFOD A’s. An A team is commanded by a Captain and the XO is a warrant officer. The team sergeant, or operations sergeant, is a Master Sergeant. There are nine other enlisted members broken down by MOS. The junior member is usually at least a Sergeant E-5 on an SFOD A. As a general rule, SFOD A commanders do not have UCMJ jurisdiction over team members because it has been withheld at the company level.

USASOC, USASFC(A) and USACAPOC have Offices of Staff Judge Advocates. Each SFG, the Ranger Regiment, PSYOPS Group, CA command, and the John F. Kennedy Special Warfare Center and School have command judge advocates.

COMMAND AND CONTROL DURING OPERATIONS

As noted above, SO are inherently joint. SOF assigned in a theater are under the combatant command (COCOM) of the geographic CINC. Moreover, because USSOCOM and its Army sub-component are supporting commands, in most instances, when SOF deploy overseas, they are under the operational control (OPCON) of the combatant command for the geographic area in which they are operating. Further, each warfighting CINC has a Special Operations Command (SOC). SOF in theater are under the operational control (OPCON) of the SOC. For example, the Special Operations Command for the Commander and Chief of the Pacific is referred to as SOCPAC. Usually these SOCs are commanded by a one star General or Admiral. Recently, judge advocate’s have been assigned to some of these SOCs.

In an operation, the SOC may order the establishment of a Joint Special Operations Task Force (JSOTF). Generally speaking, the JSOTF commander will either be the SOC or the service SOF with the largest presence in the AOR. A JSOTF is a temporary joint SOF headquarters established to control more than one service specific SOF or to accomplish a specific mission. If augmented by foreign units, the designation becomes Combined Joint Special Operations Task Force or a Combined Unconventional Warfare Task Force (CUWTF). In order to synchronize SO with land and maritime operations with conventional units, a Special Operations Command and Control Element (SOCCE) is often established. It collocates with the supported conventional forces. The SOCCE can receive operational, intelligence, and target acquisition reports directly from deployed SOF and provides them to the supported component. The Special Operations Coordination Element (SOCOORD) is the primary SOF advisor to an Army corps or Marine Expeditionary Force (MEF) with regard to SOF integration. The SOCOORD normally is a staff element within the G3 or J3 staff section.

As a general rule, military justice jurisdiction continues to reside with the parent supporting unit even while deployed. USASOC and USASFC(A) are General Courts-Martial Convening Authorities for Fort Bragg units. However, ARSOF not located at Fort Bragg depend on the installation commanders for the installations on which they are tenants for GCMCA support. This can cause some tension between the servicing GCMCA and the SOF command. The installation commander is responsible for maintaining good order and discipline on the installation, she is not however responsible for the success or failure of the missions conducted by SOF tenants. This may cause friction between the post commander and tenant SOF.

Consequently, more than one “chain-of-command” or criminal jurisdiction will have an interest in discipline issues that take place, especially overseas. For example, if an SF soldier from the 1st SFG at Fort Lewis, WA, commits an offense while TDY on Kadena AFB in Okinawa, SOCPAC, USARJ, the AFB Commander, the Fort Lewis Installation Commander (GCMCA), and the technical chain running from 1st SFG to USASFC(A) and USASOC at Fort Bragg may all have an interest in the outcome. The SOF judge advocate must be extremely wary of the potential for command

influence in situations where serious incidents occur overseas because of this multi-command interest. Although it is questionable whether unlawful command influence can be brought to bear from commands outside the “chain,” technical chains of command do have the potential to significantly influence the independent individual judgment of a soldier’s actual commander. Intense coordination with the respective unit judge advocates is the best tact to take in resolving these issues.

SOF units may deploy as an entire unit, or, as is more likely the case, by smaller detachments to support various missions in the warfighting CINC’s area. Because SFGs are often the lead ARSOF in a theater and because in combat they are configured differently than conventional units, a brief introduction as to how a SFG is configured for operations may be helpful. Additionally, it is important for SOF judge advocates to understand the basic composition of the SFG during operations because the Group Commander may become the JSOTF or ARSOTF commander.

If an entire SFG, or part of the SFG and the Group headquarters deploys, it will establish a Special Forces Operational Base (SFOB). Each SF battalion will in turn establish Forward Operational Bases (FOB). The SFOB and the FOBs will have an Operations Center (OPCEN), which functions much like a main CP at the brigade or division. The SFOB and FOB will also have a Support Center (SUPCEN) and a Signal Center (SIGCEN). Future operations are planned and current operations are controlled at the OPCEN. The current and future operations are sustained at the SUPCEN. SO require extremely sophisticated and redundant communications systems, thus the need for a SIGCEN. Doctrine places the judge advocate in the SUPCEN with the S-1 and S-4. However, a judge advocate can be far more effective at the OPCEN. The commander may be willing to move the GJA to the OPCEN.

The FOB will also have an Isolation Facility (ISOFAF). Once an SFOD-A, “A Team,” receives a mission, it isolates from the rest of the unit. The team begins to plan, train and rehearse for the mission, outside the view of the outside world. The ISOFAF is where the teams isolate. Several teams can isolate simultaneously in the ISOFAF, with each team having its own team room. No one can enter the ISOFAF without one of the isolating teams’ permission. It is, however, during isolation that legal briefings to the teams are critical. The key to getting into the ISOFAF is often the relationship the judge advocate has with the team prior to deployment. If the judge advocate has provided competent legal advice in the past or has participated in activities with the team out of the legal office such as airborne operations, the team may be quicker to allow the judge advocate to meet with them. The teams are very closed, tight knit societies; even the battalion and group commanders are often looked at as outsiders by the teams.

The judge advocate must make sure to be present in the ISOFAF for the “briefback.” Just prior to final rehearsals, the team will conduct a briefback with the battalion and sometimes group commander. During the briefback, the team will explain the concept of their operation in detail. Every member of the team will be present and participate. During the briefback, the team obtains the commander’s approval or disapproval or modifications to its plan. This is the last opportunity the GJA will likely have to review the operation and provide input. Once the mission is complete and the teams return from the operation, they return to the ISOFAF and they remain in isolation until they are “debriefed.” As part of the debrief with the S2, the team will review everything it did and the team members saw or heard, including potential law of war or human rights violations by either side. The Group judge advocate should obviously be present for debriefs as well.

During the day to day SOF routine operations, the parent unit will remain at home station. The teams will deploy from home station to conduct their missions independent of the SOF chain of command. Command and control is maintained through sophisticated communications. Not only are the teams often separated from home station by thousands of miles, there are numerous simultaneous overseas operations being conducted from the home station. It is not the least bit unusual for a SFG to have teams in more than 15 different countries at once. It is obviously impossible for the GJA to be with them on all deployments. The various teams deployed may be generating numbers of legal issues without even realizing it.

To prevent legal catastrophes, the judge advocate must learn to create a virtual presence with the deployed detachments. This is accomplished primarily by religiously monitoring message traffic at group and battalion headquarters and by fostering a willingness on the teams part to “phone home” at the first sign of trouble by building trust and confidence prior to deployment. Second, intense planning, training and briefings must take place before each and every mission so the team understands the potential legal issues. Third, the Group and Battalion staffs must be trained to recognize legal issues. Finally, the GJA has no choice but to rely on his or her NCOs. Group Legal NCOs must be

highly skilled and motivated individuals. There are more missions than the judge advocate alone can support without significant assistance. SOF legal NCOs must be capable of conducting training and legal briefs to deploying teams.

SPECIAL OPERATIONS MISSIONS

Direct Action (DA).

These are short duration strikes and other small-scale offensive operations. For example, raids, ambushes, terminal guidance operations, recovery operations, and mine warfare are some of the missions considered to be direct actions. For the judge advocate, such a mission must be reviewed for potential law of war and policy violations. As with conventional operations, all of the law of war relating to the use of force, targeting, chemical weapons, non-combatants, and principals such as distinction, military necessity, proportionality and unnecessary suffering applies to SOF missions. Policy limitations, usually expressed through the Rules of Engagement, also have significant impact on DA as well as other SOF activities. A SOF judge advocate must have at a minimum, a copy of FM 27-10, The Law of War; DA Pam 27-1, Treaties Governing Land Warfare; DA Pam 27-1-1, Protocols to the Geneva Conventions; DoD Dir. 5100.77, Law of War Program; CJCSI 5810.01, Implementation of the Law of War Program; and CJCSI 3121.01A, Standing Rules of Engagement (an unclassified version appears in Chapter 5 of this Handbook).

An issue that routinely arises in these areas is that the mission specific ROE do not always keep pace with mission changes. It is not unusual for SOF to receive a mission that is inconsistent with the mission specific ROE. One way to handle this disconnect is to immediately ask for an ROE supplemental. At the same time, send message traffic to higher headquarters indicating that the mission appears to be inconsistent with the ROE and that the subordinate unit assumes that inherent in the order to perform the mission is the authority to amend the ROE for the specific mission.

Special Reconnaissance (SR).

These are recon or surveillance actions conducted to obtain or verify, by visual observation or other collection methods, information concerning the capabilities, intentions and activities of an actual or potential enemy. SR may also be used to collect data concerning the meteorological, hydrographic, or geographic characteristics of a particular area. SR may include environmental recon, armed recon, target and threat assessment. There are numerous laws and regulations that regulate intelligence activities, many of which may impact on SR. (see Chapter 15). SOF judge advocates must be thoroughly familiar with E.O. 12333, U.S. Intelligence Activities, and AR 381-10, U.S. Army Intelligence Activities. They should also have access to DoD Dir. 5240.1, DoD Intelligence Activities; DoD Reg. 5240.1R, Procedures Governing the Activities of DoD Intelligence Components that Affect United States Persons; AR 381-20, The Army Counterintelligence Program; AR 381-102 (S), Cover and Cover Support (U). A tremendous resource in the area of HUMINT operations is the Defense Intelligence Agency, Intelligence Law Handbook.

In terms of the law, SOF soldiers are generally most concerned about compromise by a non-combatant during SR. There is no SF exception to the LOW. Therefore, compromise alone does not provide grounds to kill a non-combatant. It would be permissible to capture and detain such a person, to evacuate with the non-combatant, or to temporarily incapacitate the individual. If however, the person is incapacitated, he or she should be left in a location where they can be discovered or eventually recover and return to where they came. From a practical standpoint, even if the non-combatant were killed to avoid detection, especially if it is a child, compromise will likely take place as search parties are formed to look for the missing person.

Foreign Internal Defense (FID).

SOF are routinely called upon to organize, train, advise, and assist host nation (HN) military and paramilitary forces. The goal in FID is to enable HN forces to maintain their own internal security. There are numerous legal issues related to FID. One of the most important is the status of SOF personnel and units. Although this is always an issue in operations, it is particularly acute in FID. Because the force is there with HN consent, HN law is, as a general rule, fully applicable. The judge advocate must be familiar with any Status of Forces Agreements or Status of Mission Agreements that may be applicable. In any given mission, there may be agreements short of SOFAs, such as Diplomatic Notes, on point. It is not always easy to locate all the relevant international documents impacting a mission. The judge advocate may start by researching DoS publications such as Treaties in Force. Judge advocates should contact the relevant CINC's legal office.

The Defense Attaché or Military Assistance Group at the embassy may have access to HN agreements. DAIO may have international agreements relating to the HN on file. CLAMO maintains many SOFAs on JAGCNet.

The second most important issue in FID is Fiscal Law. A SOF judge advocate must understand how military operations are funded. In the area of FID, SOF judge advocate's must fully understand 10 U.S.C. § 2011, Training with Friendly Foreign Forces, and 10 U.S.C. § 2010, Combined Exercises. The judge advocate should also know of other potential means of funding the training of foreign forces, such as 10 U.S.C. § 166a, CINC Initiative Funds, 10 U.S.C. § 168, Mil to Mil Contacts, 10 U.S.C. § 1050, Latin American Cooperation, 10 U.S.C. § 1051, Bilateral or Regional Cooperation Programs, and, Small Unit Exchange Agreements as outlined in AR 12-15. (See Chapters 12 and 14.)

a. Combined Exercises as part of FID.

SOF spend significant time practicing their wartime missions through exercises with host country armed forces overseas. 10 U.S.C. § 2010 allows U.S. forces to pay the incremental costs of conducting training with soldiers from a developing country. To comply with the law the combined training should be 1) undertaken primarily to enhance the security interests of the United States, and 2) the participation of the developing country is necessary to achieve the fundamental objectives of the training exercise. The mission planning documents should clearly reflect these statutory requirements. Combined exercises afford SOF with an excellent opportunity to train in regions of the world to which they are slated to deploy in "real world" situations. The judge advocate must be aware of the jurisdictional status of U.S. forces while in the host country. A SOFA may exist between the U.S. and the host country that establishes jurisdiction. If not, the judge advocate should either seek to obtain one or some other diplomatic resolution to HN jurisdiction. The judge advocate should work through the SOC or CINC legal office or through the military attaché or MILGROUP at the U.S. Embassy in the relevant country.

b. The "Special Forces Exception" as part of FID.

In recognition of the need for SOF to train others in order to train itself to accomplish its FID and unconventional warfare missions, Congress granted to SOF an exception to the rule that O&M funds cannot be used in the training of foreign forces. Under 10 U.S.C. § 2011, the "Special Forces Exception," SOF are authorized to expend O&M funds for the costs of training itself and for incremental costs of the foreign military it trains. The "primary purpose of the training for which payment may be made ... shall be to train the special operations forces of the combatant command." 10 U.S.C. § 2011(b). Under 10 U.S.C. § 167(e)(2)(c) the Commander of U.S. Special Operations Command (CINCSOC) has the responsibility for exercising direction, authority and control over the expenditure of funds for SOF training. Therefore, spending SOF O&M funds (termed MFP-11 funds) will take place with coordination with the normal CJCS execute order process in conjunction with USSOCOM. The focus of such a mission must be on training SOF and not training the HN military forces.

The purpose of the SOF exception is to enhance the ability of CINCSOC to "prepare special operations forces to carry out assigned missions" by clarifying his authority to program and expend funds to train SOF in the U.S., its possessions and territories, and overseas. It also assists the commander of other unified combatant commands to fulfill their responsibilities for ensuring the preparedness of their forces to carry out assigned missions, among which is dealing with low-intensity conflict environments. Unlike conventional forces, the successful accomplishment of many types of SOF activities is dependent upon language capability and a thorough understanding of national and/or ethnic backgrounds, cultures, social norms, and customs. These specialized forces must develop and maintain their knowledge and understanding of the nations in which they operate. This training in peacetime facilitates the ability to work with indigenous forces in armed conflict as well. This is particularly true in view of their role as force multipliers, i.e., trainers of indigenous forces in foreign internal defense and unconventional warfare scenarios.

Unconventional Warfare (UW).

This activity covers a broad spectrum of military and paramilitary operations. It generally entails SOF leading or training a non-state paramilitary organization in combat operations. UW may involve operations with friendly indigenous personnel that are of a long duration. SOF involved in UW may participate in guerrilla warfare, subversion, sabotage, and support to escape and evasion networks. A thorough knowledge of the law of war is crucial in this area, especially international law relating to status. Specifically, Articles 2 and 4 of the 1949 Geneva Convention Relative to the Treatment of Prisoners of War (GPW) and Articles 43 through 47 of Protocol I to the Geneva Conventions (GPI). These

articles explain when the GPW and GPI are triggered and what is required of an individual in order to be treated as a POW upon capture.

POW status is a critical legal term of art because if captured, all of the requirements of status must be met in order for an individual to be entitled to the protections of this body of international law. The two primary benefits of status are that a POW is not longer a legitimate target, and the POW is entitled to immunity from prosecution for pre-capture warlike acts. As a general rule, the GPW and GPI are triggered if there is an international armed conflict. That is, an armed conflict between two state parties. If these treaties are triggered, a person is entitled to status as a POW only if she conducted herself in such a manner as to be distinguishable from the civilian population before capture. She must either have been a member of the armed forces of one of the parties or she must be a member of a militia or resistance movement belonging to a party to the conflict. Moreover, among other requirements, one seeking POW status must wear fixed insignia recognizable from a distance. They must also carry their weapons openly. GPI only requires that combatants in an international armed conflict carry their weapons openly in the attack and be commanded by a responsible person. There is no requirement for wearing insignia recognizable at a distance for example. The United States is not a party to GPI, and objects to this difference because it makes it difficult to distinguish civilians from combatants. However, the SOF judge advocate must know how status is achieved in GPI. The judge advocate will have to understand how enemy nations will view the status of captured U.S. SOF operatives and UW assets. The judge advocate will also need to understand how ally signatories apply status.

The SOF judge advocate should also consider what, if any, criminal jurisdiction the U.S. commander might have over the members of a U.S. led militia. A central issue will be whether it is a “time of war” for the purposes of UCMJ, R.C.M. 103(19). This is critical because court-martial jurisdiction exists over persons serving with or accompanying the force during time of war. UCMJ, Art. 2a(10).

Combating Terrorism.

This includes both antiterrorism (AT), defensive measures to reduce vulnerability to terrorist acts, and counterterrorism (CT), offensive measures taken to prevent, deter, and respond to terrorism. When directed by the NCA, SOF may be involved in the recovery of hostages or sensitive material from terrorists; attack of terrorist infrastructure; reduction of vulnerability to terrorism. While AT is within the realm of most SOF, CT is generally the province of Special Mission Units (SMU) and beyond the scope of this Handbook. (See Chapter 18, Combating Terrorism, of this Handbook.)

Psychological Operations (PSYOPS).

The purpose of PSYOPS is to induce or reinforce foreign attitudes and behaviors. This may occur at the strategic, operational and tactical level. The overall approval for PSYOPS in peacetime or wartime rests at the NCA level. The NCA has delegated PSYOPS approval authority to ASD SO/LIC. Additionally, U.S. policy requires review of PSYOPS by the DoD General Counsel prior to approval (see Chapter II, Joint Pub 3-53). Consequently, an overall PSYOPS campaign will have ordinarily been reviewed and approved at echelons above the level of a unit or JTF judge advocate. The role of the judge advocate, then, is to provide advice on the implementation of the PSYOPS campaign.

While PSYOPS elements work closely with Civil Affairs (CA) elements, the G-3 coordinates their activities, not the G-5. Still, CA, PSYOPS, and public affairs actions can dramatically affect the perceived legitimacy of a given operation. When properly utilized, PSYOPS is a force multiplier. It can be employed to enhance the safety and security of the force by communicating directly with the local and regional audience to inform them of such things as: (1) the existence and location of Civil Military Operations (CMO); (2) the nature and extent of the mission; and, (3) instructions to avoid interfering with ongoing military operations. PSYOPS is often the only means of mass communications a field commander has with both hostile and foreign friendly groups on the area of operations.

Major Legal Considerations/Limitations in PSYOPS:

a. United States Citizens. U.S. policy is not to conduct PSYOPS toward U.S. citizens, whether they are located within the U.S. or OCONUS. Judge advocates must be particularly cognizant of this policy during disaster relief operations, such as occurred following Hurricane Andrew, where PSYOPS units were operating in CONUS.

b. Truth Projection. “PSYOPS techniques are used to plan and execute truth projection activities intended to inform foreign groups and populations persuasively” (Joint Pub 3-53, Chapter I, para. 5a(1)). We do not engage in misinformation, although information may be slanted to our perspective in order to persuade. To succeed, PSYOPS information cannot be viewed as deceptive.

c. DoS Supervision. In peacetime, DoS provides the overall direction, coordination, and supervision of overseas activities. DoS may restrict messages, themes, and activities within countries or areas. New missions, projects, or programs must be coordinated with the U.S. Country Team at the U.S. Embassy.

d. Geneva Conventions/Hague Regulations. Judge advocates must carefully review deception plans to ensure that they do not employ “treachery” or “perfidy,” which are prohibited acts under the law of war.

e. Treaties in Force. International agreements with host countries may limit the activities of PSYOPS units. Judge advocates must carefully review SOFAs and other agreements prior to, and during the course of, deployments.

f. Use of PAO Channels. PAO channels are open media channels that provide objective reporting. Consequently, they MAY be used to counter foreign propaganda. PAO and PSYOPS staffs should coordinate their efforts. However, because the PAO must remain credible, information passed through PAO channels MUST NOT propagandize. It must be objective truth.

g. Domestic Laws. PSYOPS uses extensive computer, audio, and video technology. Accordingly, judge advocates must be alert to copyright and fiscal issues, and ethics limitations on the use of PSYOPS capabilities for private groups.

h. Fiscal Law. PSYOPS campaigns may include “giveaways” (T-shirts with a printed message, for example). The purchase and distribution of “giveaways” requires careful fiscal law analysis.

i. Personnel Issues. Many PSYOPS assets are in the Reserve Component (RC). Many PSYOPS analysts are DoD civilians who voluntarily deploy to mission areas. Disciplinary, readiness, and law of war issues for RC and civilian personnel involved in PSYOPS require the attention, and early proactive involvement, of judge advocates.

j. Disciplinary Exceptions. PSYOPS teams may require exceptions to restrictions often contained in General Orders. For example, PSYOPS personnel conducting an assessment of PSYOPS may have to wear civilian clothing in contravention of a general requirement to remain in uniform at all times.

Civil Affairs (CA) Operations.

Military commanders must consider not only the military forces but also the environment in which those forces operate. One factor of the environment that commanders must consider is the civilian population and its impact—whether it is supportive, neutral, or hostile to the presence of military forces. CA forces enhance the relationship of the military command with the civilian populace. They assist commanders in working with civil authorities and in controlling the populace in the operational area. (Dep’t of Army, Field Manual 41-10, Civil Affairs Operations 1-1, 6-1).

Terms and Definitions

CA are the designated Active and Reserve Component forces and units organized, trained, and equipped specifically to conduct CA activities and to support civil-military operations (CMO). Approximately 95% of the CA force structure reside in the USAR.

CA activities are activities performed or supported by CA forces that: (1) embrace the relationship between military forces and civil authorities in areas where military forces are present; and (2) involve the application of CA functional specialty skills, in areas normally the responsibility of civil governments, to enhance the conduct of CMO. All CA activities support CMO.

CMO are the activities of a commander that establish, maintain, influence, or exploit relations between military forces, government and nongovernment civilian organizations and authorities, and civilian populace in a friendly, neutral, or hostile area of operations in order to facilitate military operations and consolidate and achieve U.S. objectives. CMO may include performance by military forces of activities and functions normally the responsibility of local, regional, or national government. These activities may occur before, during, or after other military actions. They may also occur, if directed, in the absence of other military operations. CMO are conducted to minimize civilian interference with military operations, to maximize support for operations, and to meet the commander's legal and moral obligations to civilian populations within the commander's area of control. (Joint Publication 3-57, Joint Doctrine for Civil-Military Operations).

Civil-Military Cooperation (CIMIC) refers to NATO's broad approach to security. CIMIC covers a wide variety of activities ranging from sustaining life to restoring government. CIMIC functions normally are divided into the following three groups: pre-operational, operational, and transitional. NATO describes CIMIC as those measures undertaken between NATO Commanders and national authorities, civil and military, which concern the relationship between NATO forces and the national governments and civil populations in an area where these military forces are, or plan to be, stationed, supported or employed. Such measures also include cooperation between the Commanders of the NATO forces and UN-agencies, Non-Governmental Organizations (NGO), Private Volunteer Organizations (PVO) and other authorities. (NATO Logistical Handbook).

Civil-Military Operations Center (CMOC) is the nerve center for CMO. It is an ad hoc organization, normally established by the geographic combatant commander or subordinate joint force commander, to assist in the coordination of activities of engaged military forces, and other U.S. Government agencies, nongovernmental organizations, and regional and international organizations (IO). There is no established structure, and its size and composition are situation dependent. This organization is where coordination occurs between the several DoD agencies and other non-DoD agencies (i.e., DoS, USAID, DART). It also performs essential coordination or liaison with host nation (HN) agencies, the Country Team, and if applicable, UN agencies.

Relationship Between CMO and CA Activities

CMO is broader in scope than CA activities. CMO encompass the CA activities that the commander takes to establish and maintain relations between the military forces and the civilian authorities and general population, and the institutions in the area of operation. CMO occurs in virtually every operation across the range of military operations including peacetime, military operations other than war (MOOTW), and war. CA forces support the commander in the execution of CMO by assisting in the planning, coordination, and supervision of CA activities.

Designated CA forces, other military forces, or a combination of CA forces and other forces may perform CMO. In general, every U.S. military organization has some capability to support CMO. Activities include food and water distribution, medical treatment for the HN civilians, repairing battle damage, and improving local infrastructure.

The authority of the commander to conduct CMO is derived from a decision of the National Command Authorities (NCA) to conduct a military operation. Limitations on this authority may be found in the mission statement, international agreements, the law of armed conflict, U.S. foreign policy decisions, U.S. and HN law, the relationship between the government of the U.S. and the HN, and the participation of other foreign countries in the operation. Other considerations that may affect CMO include the availability of resources, U.S. fiscal law, the political-military situation, the requirement of the military situation, and the environment (e.g., economic and social development of the HN). Although conditions may differ, the basic mission of securing local acceptance and support for U.S. Forces, and minimizing and eliminating the friction and misunderstandings that can detract from U.S. relations, remains the same.

CA Activities Supporting CMO

As previously noted, CMO occurs in peacetime, MOOTW, and war. The nature of the military operation will determine the specific CA activities that will be conducted in support of CMO. In general, CA forces prepare estimates, country assessments, agreements, operation plan (OPLAN) and operation plan in concept format (CONPLAN) annexes, and other documentation required to support military operations. They coordinate CMO with other DOD and/or U.S. Government agencies, multinational, or HN governmental civil and military authorities, or other civilian groups, to facilitate an understanding of the objectives and synchronize efforts to achieve the mission. CA forces also supervise the

execution of CMO performed by U.S. or foreign personnel or agencies. Finally, they serve as liaison between U.S. military and allied or coalition, HN forces, IOs, NGOs and PVOs.

CA activities include foreign nation support (FNS), populace and resource control (PRC), humanitarian assistance (HA), military civic action (MCA), emergency services and support to civil administration. PRC, HA and MCA were designed for low intensity conflict scenarios (foreign internal defense (FID) and unconventional warfare), but the activities may be used in other environments.

FNS involves the identification, coordination, and acquisition of resources, such as supplies, material, facilities and labor, in support of a U.S. military mission during peace, preparation for war, and wartime. FNS includes both HN support (HNS) and third country support. HNS is support provided by a friendly country for U.S. military operations conducted within its borders, based upon status of forces agreements or other mutually concluded agreements. Third country support includes support provided by friendly or allied nations. By receiving this support, the U.S. military reduces the need for U.S. personnel, material, and services within the area of operations. FNS is the preferred method of obtaining combat service support.

The Assistant Chief of Staff G5/CMO (G5/CMO) is responsible for identifying and acquiring FNS required by the force. CA forces assist the G5/CMO by identifying available resources, facilities, services, and support, within the supported command's area of operations. Additionally, they coordinate U.S. requirements for, and assist in the acquisition of local resources, facilities, services, and support. For example, in the acquisition process, CA forces make recommendations concerning the availability of local resources, identify the source, and serve as the initial intermediary for the U.S. military and the local source.

CA operations in FNS were clearly demonstrated during Operations DESERT SHIELD/STORM. In particular, CA forces met with Saudi officials to arrange for the use of various facilities such as laundry, shower, mail, warehouse, and maintenance space. Also, CA forces arranged for the acquisition of food, water, medicine, and other supplies to support both dislocated and enemy prisoner of war operations.

Populace and resource control operations are measures to deny support and assistance to an enemy by controlling the movement of people, information, and goods. Examples of population controls operations include such measures as registration, identification cards, movement control, curfews, travel permits, censorship, and resettlement of the local population. Resource controls operations include rationing, regulations or guidelines, price-controls, licensing, amnesty programs, inspection of facilities, and checkpoint operations. CA forces support PRC operations by providing advice and assistance in planning and conducting PRC. Although HN police or military forces normally carry out these operations, U.S. forces may be required to conduct these operations until HN forces are available to relieve them.

An example of PRC operations occurred during Operation DESERT STORM. CA forces supporting a French Division established a military checkpoint to screen dislocated civilians (DCs) returning to the town of As Salman, Iraq. At the checkpoint, all vehicles and personnel were stopped and searched by CA forces for weapons and other contraband. Iraqi military personnel were identified, separated from the DCs and transported to an enemy prisoner of war (EPW) camp. After screening and in processing, the DCs were issued U.S. made identity card and rations. Finally, all DCs returning to the town were briefed by the muhktar (tribal leader) on the military's administration of the town and rules for As Salman.

In addition to the above, PRC operations include dislocated civilian (DC) operations and noncombatant evacuation operations (NEO). DC operations minimize local population interference with U.S. military operations and protect civilians from the collateral effects of combat. Uncontrolled masses of people seriously impair the movement of military units and supplies in support of the commander's operations. These operations also mitigate and control the outbreak of disease among DCs that can spread to military forces operating in the area. Finally, DC operations centralize the population of DCs into selected and controllable areas where they can receive supplies and services.

The G5/CMO is the primary planner of DC operations. CA forces support the G5/CMO by planning and conducting DC operations. In addition, they advise the G5/CMO on the anticipated reaction of the populace to the planned military operations. CA forces coordinate with military police (MP) and/or security forces, psychological operations (PSYOP) forces, and logistic support for the movement, collection, housing, feeding, and protection of DCs. They also coordinate with U.S. and HN agencies, international organizations (IO), NGOs and PVOs that are operating within the area of

operation. The purpose of this coordination is to obtain the necessary support from these agencies and organizations thereby reducing the requirements placed upon U.S. military forces in meeting the commander's legal obligations in providing the minimum standard of humane care and treatment for all civilians. Finally, CA forces may be called upon to provide humanitarian and civic assistance to dislocated civilians located outside the combat zone.

In Operation DESERT STORM, CA forces controlled and provided humanitarian assistance to displaced civilians, refugees, and EPWs found on the battlefield. As a result of their efforts, CA forces minimized the effect these persons had on military operations and safeguarded them from combat operations. In the rear areas, CA forces organized and managed the displaced civilians and refugee collection points and camps and assisted the transition of responsibility for these groups from military to international relief organizations. (*see*, DoD Report to Congress, Conduct of the Persian Gulf War).

Another example of DC operations occurred in Northern Iraq during Operation PROVIDE COMFORT. The major CA effort in this operation involved establishing and operating camps for the displaced Kurdish civilians. CA units interfaced with over 60 private and voluntary organizations, the USAF, the USMC, the armies of over eight allied countries and United Nations (UN) agencies in providing assistance to the Kurds. During this operation, they worked with various supporting units and organizations to insure that over a half million Kurds were housed, moved, clothed, fed and assisted while displaced from their homes.

NEOs are military operations conducted to relocate threatened noncombatants from locations in a foreign country. They are normally conducted to evacuate U.S. citizens from a hostile environment created either by armed conflict, lawlessness, or natural disaster. Evacuees may also include selected local citizens or third country nationals, including NGO and PVO volunteers, IO workers and members of media organizations. During NEOs, the U.S. Ambassador is the senior authority for the evacuation and is ultimately responsible for the successful completion of the NEO and the safety of the evacuees. However, the military commander is solely responsible for conducting the operation. (For a detailed review of NEOs, *see* Operation Law Handbook, Chapter 21 and Joint Pub 3-07.5, Joint Tactics, Techniques, and Procedures for Noncombatant Evacuation Operations).

CA forces support NEOs by advising the commander on how to minimize population interference with evacuation operations. When possible, they obtain civil or indigenous support for the NEO. CA forces maintain close liaison with embassy officials to ensure effective coordination and delineation of CMO responsibilities and activities. They may also assist the embassy personnel in receiving, screening, debriefing and identifying evacuees. Finally, CA forces can support operations at the evacuation site, holding areas for non-U.S. nationals denied evacuation, and reception and processing stations.

Humanitarian assistance operations are conducted to relieve or reduce the results of natural or manmade disasters or other endemic conditions such as human pain, disease, hunger, or privation that might present a serious threat to life or that can result in great damage to or loss of property. HA may be considered as part of the FID when the support is provided to a HN that is experiencing lawlessness, subversion, or insurgency. However, HA efforts may be in response to unforeseen disaster. HA is designed to supplement or complement the efforts of the HN civil authorities or agencies that have the primary responsibility for providing humanitarian assistance. In addition, the assistance provided by U.S. forces is limited in scope and duration. Examples of HA operations include medical assistance programs, transportation assistance, or other activities that provide basic services to the local populace.

HA operations encompass disaster relief, refugee assistance and humanitarian and civic assistance (H/CA). Disaster relief operations provide emergency assistance to victims of natural or manmade disasters in overseas areas. These operations are responses to requests for immediate assistance and rehabilitation from foreign governments or international agencies. Disaster relief operations may include refugee assistance, food programs, medical treatment and care or other civilian welfare programs.

CA forces support HA operations by providing relief, coordinating programs for relief and rehabilitation, and providing control measures appropriate to the situation. In Operation RESTORE DEMOCRACY, CA forces coordinated the work of NGOs and PVOs and planned and executed humanitarian assistance and civic action projects. CA activities included medical care, food distribution, and rudimentary construction of roads and sanitation facilities.

Refugee Assistance operations support the resettlement of refugees and displaced persons. CA forces assist the military in providing or coordinating for the safety, sustenance, and disposition of refugees and displaced persons. During Operation JOINT FORGE, the Combined-Joint Civil-Military Task Force (CJCMTF), a Stabilization Force (SFOR) formation, performed activities that supported the return of displaced persons and refugees (DPRE) to Bosnia and Herzegovina. CJCMTF prepared Municipality Information Reports (MIR) which included detailed information about the population, economy, public services, housing, and infrastructure of the municipalities within Bosnia and Herzegovina. The reports also included a recommendation regarding the suitability of the municipality for the return of DPRES. Once completed, the reports were placed on the Repatriation Information Center webpage on the Internet. In this manner, DPRES could obtain information about their former communities when deciding whether to return to their pre-war homes. The CJCMTF also participated at all levels of the Reconstruction and Returns Task Force (RRTF). The RRTF coordinated international support for the process of DPRE returns. At the highest level, the RRTF developed policy, shared problems and developed solutions to those problems with the membership. At the field level, the RRTF synchronized returns by bringing all relevant actors together to discuss and coordinate the return process. In addition, the CJCMTF established and maintained a liaison and coordination role with both the Federation and the Republika Srpska ministries responsible for DPRE returns. In Multinational Division North, the CA battalion determined the requirements for, identification, submission, and verification of Community Infrastructure Rehabilitation Program (CIRP) projects. The CIRP program provided funding for the rebuilding of community infrastructure related to water, electricity, street lighting, roads, bridges, and other needed projects. In addition to developing the infrastructure, CIRP projects encouraged the local community to cooperate with DPRE returns. Finally, the CJCMTF provided functional expertise and support to various organizations (IOs, NGOs, and PVOs) supporting the return process.

Humanitarian and Civic Assistance (H/CA) is provided to the local populace by predominantly U.S. forces in conjunction with military operations and exercises. This assistance is specifically authorized by title 10, United States Code, section 401 and funded under separate authorities. Assistance provided under these provisions is limited to: (1) medical, dental, and veterinary care provided in rural areas of a country; (2) construction of rudimentary surface transportation systems; (3) well drilling and construction of basic sanitation facilities; and (4) rudimentary construction and repair of public facilities. The assistance must fulfill unit-training requirements that incidentally create humanitarian benefit to the local populace.

MCA involves activities intended to win support of the local population for the foreign nation and its military. MCA is an essential part of military support to a FID. MCA is the use of preponderantly indigenous military forces on projects useful to the local population at all levels in such fields as education, training, public works, agriculture, transportation, communications, health, sanitation, and others contributing to economic and social development, which would also serve to improve the legitimacy of the military forces and host government with the populace. The long-range goal of MCA is to nurture national development. CA forces plan, coordinate, advise, and direct MCA operations for the host government. As an example, CA forces assist indigenous forces by providing skills in the technical areas of light-construction engineering and medical support. Successful CA operations eliminate or reduce military, political, economic and sociological problems. Although MCA may involve U.S. supervision and advice, the visible effort will be conducted by the local military.

Emergency Services operations support the ability of a HN to respond to disasters or other emergencies. CA forces provide advice and assistance in identifying and assessing the HN's emergency service capabilities and resources. In addition, they assist in emergency planning and operations. For example, during Operation DESERT SHIELD, CA forces assisted the Saudi government in civil defense emergency planning. They were also familiar with the status of the Saudi civil defense preparedness including dispersal locations, warning systems, shelters, and NBC defense resources for civilians. (*see* DoD Report to Congress, Conduct of the Persian Gulf War).

DoD also conducts operations outside the continental U.S. (OCONUS) that respond to immediate emergency conditions that are created by a disaster and effect emergency repairs to, or the emergency restoration of, vital utilities and facilities destroyed or damaged by any such disaster. CA forces can assess the damage to the civil infrastructure, assist in the operation of temporary shelters, and serve as liaison between the military and local relief organizations, NGOs, PVOs, IOs, and other U.S. agencies involved in the operation.

Civil Administration is established by a foreign government in: (1) friendly territory, under an agreement with the government of the area concerned, to exercise certain authority normally the function of the local government, or (2)

hostile territory, occupied by US forces, where a foreign government exercises executive, legislative, and judicial authority until an indigenous civil government can be established.

CA support includes: (1) assisting a host/allied government in meeting its people's needs and maintaining a stable and viable civil administration; (2) establishing a temporary civil administration to maintain law and order and to provide life sustaining services until the HN can resume normal operations; and (3) establishing a civil administration in occupied enemy territory at the direction of the National Command Authority. U.S. commanders will only undertake this unique action when directed or approved by the NCA. Civil affairs forces plan, coordinate, advise, or assist those activities that reinforce or restore a civil administration that supports U.S. and multinational objectives in friendly or hostile territory.

After the Gulf War, CA forces conducted Civil Administration operations in support of the Kuwait government. Specifically, CA forces defined contract requirements, reviewed contract proposals, and advised Kuwait government officials on the merits of proposed contract arrangements. As a result of CA efforts, the Kuwait government awarded more than 558 million dollars in contracts to restore country operations. In addition, CA forces were involved in the restoration of electric power, the repair of the desalination plants, and ordnance disposal in Kuwait.

In Civil Assistance operations, CA forces provide advisory assistance to a host government in a variety of areas such as public safety, transportation, communications, and public education. For example, in Operation RESTORE DEMOCRACY, CA forces assessed the needs of the Haitian government ministries and provided training and assistance to the ministries. They worked with Haitian officials to improve public health, sanitation, education, welfare, public administration, justice, transportation and communication systems. CA forces also performed damage assessments of critical facilities within the country and recommended and coordinated short-term remedial action to restore the functions and services of the Haitian government.

In addition to the above, CA forces provide the commander with information on protected cultural assets such as arts, religious edifices, monuments, and archives. They provide safeguards and any other required protection over collections of artifacts and objects of historical or cultural importance, including appropriate records thereof. Additionally, CA forces make appropriate recommendations on plans to use or target buildings or locations of cultural value, such as temples, universities, and shrines.

CA forces also assist the commander in fulfilling his legal and moral obligations in accordance with international law including the law of war, as well as domestic U.S. laws, directives, and policy. Toward that end, CA legal advisers, in coordination with the Staff Judge Advocate of the supported command, review current plans and future operations with respect to applicable laws and agreements and advise the commander, as required. Additionally, CA forces observe conditions within the area of operations and ensure the commander is kept informed of the needs of the local populace.

Command and Control

CA forces supporting a general-purpose force operation may be assigned to the unit they support and either augment or work under the staff supervision of the G5/CMO. The G5 is the principal staff assistant to the commander in all matters concerning political, economic, and social aspects of military operations. The G5/CMO acts as a liaison between the military forces, civil authorities, and people in the area of operations. The G5/CMO supervises CA activities in the areas of government, economics, public facilities, and special functions, such as displaced civilians, refugees, evacuees; arts, monuments, and archives; cultural affairs; and civil information. Finally, the G5/CMO coordinates with the SJA on all legal matters related to CMO.

Upon mobilization, the CA Command (or senior CA unit in a theater) is normally under the command of the theater Army (TA). The TA will normally exercise OPCON of the CA Command directly. Subordinate CA forces may be General Support (GS), Direct Support (DS), or under operational control OPCON to supported headquarters within the theater. In all cases, CA units look to the next higher-level CA unit in country for technical and policy guidance. It should be noted that, in peacetime and in time of armed conflict, CA operations must be thoroughly coordinated and synchronized with the Country Team to insure unity and synergism of effort.

Legal Personnel in Support of Civil Affairs

Judge advocates assigned to CA units are the primary legal advisors to their respective units. Within the USAR, judge advocates are assigned as International Law Officers at the command, brigade and battalion levels. The senior judge advocate of the unit is designated the Command Judge Advocate (CJA) and, therefore, is a member of the CA commander's personal and special staff. CA judge advocates provide mission-essential legal services to the unit, including operational law legal service. A CJA of a deployed CA organization will coordinate with the SJA of the command to which the CA organization is assigned or attached for technical guidance and supervision.

Although judge advocates are assigned to CA units, the SJA should not assume that the deployed CA force will have its own organic legal support. When deployed, CA forces are tasked-organized based upon mission requirements. Judge advocates may not be included on the statement of requirements. For example, CA force deployed in support of Operation Joint Forge to Multinational Division North, Bosnia and Herzegovina, did not have a judge advocate assigned to the CA battalion. Thus, the SJA for the supported command was responsible for providing legal services to the to the battalion.

Legal Services in Support of Civil Affairs

IAW FM 27-100, LEGAL OPERATIONS, the SJA of the supported command and the CA CJA will effect coordination in an effort to provide legal support and services during all phases of CA operations. In the planning phase, judge advocates provide advice and assistance in the preparation and review of CA plans for consistency with U.S. law, NCA guidance, and the rules and principles of international law including those incorporated in treaties, other international agreements, and the provisions of the law of the place where U.S. Armed Forces will conduct operations.

Judge advocates prepare the legal section of the CA area study and assessment. The area study and assessment is a planning document containing information on the designated area of operations compiled before deployment or hostilities. The legal section is a general review of the legal system of the country under review and includes such matters as the civil and criminal codes and the organization, procedures and personnel involved in the administration of justice. (For a detailed review of the area study and assessment, *see* FM 41-10, CIVIL AFFAIRS OPERATIONS, Appendix G).

Judge advocates also provide predeployment training to CA forces. This training should include: (1) law of war, (2) human rights violations and reporting requirements, (3) rules of engagement, (4) military justice, (5) legal assistance, and (5) miscellaneous information concerning status of forces agreement (SOFA) with the HN, if any.

During the combat operational phase, judge advocates address legal issues concerning population control measures; targeting to minimize unnecessary collateral damage or injury to the civilian population; treatment of dislocated civilians, civilian internees, and detainees; requests for political asylum and refuge; acquisition of private and public property for military purposes; psychological operations and their effects on the civilian population; and other operational law matters.

During the stability and consolidation phase, judge advocates provide legal services concerning such matters as claims submitted by local civilians, disaster relief, and humanitarian and civic assistance issues. Additionally, judge advocates may be called upon to give advice and assistance on matters relating to civil administration within a friendly or enemy country once occupied. Judge advocates may also provide counsel regarding the creation and supervision of military tribunals and other activities for the proper administration of civil law and order. In addition, legal services may be necessary with respect to the issue of a local court's jurisdiction over U.S. military personnel and activities.

Counterproliferation (CP) of Weapons of Mass Destruction (WMD).

CP refers to actions taken to seize, destroy, render safe, capture, or recover WMD. If directed, SOF can conduct Direct Action, Special Reconnaissance, Counterterrorism, and Information Operations to deter and/or prevent the acquisition or use of WMD.

Information Operations (IO).

Information Operations are the actions taken to affect adversary information and information systems while defending one's own information and information systems. An adversary's nodes, links, human factors, weapons systems, and data are particularly lucrative targets, capable of being affected through the use of lethal and nonlethal

applications or coordinated SOF IO capabilities. This is a new area of the law and it is in the development stage. (See the chapter on Information Operations, this Handbook.)

SPECIAL OPERATIONS COLLATERAL ACTIVITIES

In addition to the nine listed SOF activities, SOF also conduct what are known as collateral activities. Based on inherent capabilities possessed by SOF required to complete their primary missions, they are particularly suited for these collateral activities as well. The seven most common collateral activities in which SOF participate in are stated below.

Coalition Support.

SOF will deploy whenever possible in small groups to accompany coalition forces during deployments or actual combat operations. This includes training coalition partners on tactics and techniques, assisting with communications and integration into the command and intelligence structure. SOF possesses the language capability, cultural awareness, and interpersonal skills, which enable them to build tight professional and personal bonds with allied contingents. Termed “coalition support teams” (CST), the SOF train, live, deploy, and sometimes fight alongside our allies. CST play an integral part in ensuring that the Rules of Engagement are understood and followed by the members of the coalition. They will dramatically assist the judge advocate responsible for training foreign forces in the Task Force Rules of Engagement. CST must understand that they are required to document and report violations of the law of war. CST may not be able to prevent (nor are they usually required by law or direct command policy to intervene) in all ROE, Law of War, or Human Rights violations committed by allied forces. They remain subject to the UCMJ and may not participate in violations; and, additionally, must document and report incidents immediately.

Combat Search and Rescue (CSAR).

CSAR involves the rescue and recovery of distressed personnel during war or MOOTW. USSOCOM is responsible for the CSAR of its own forces, and, when directed, other forces as well. SOF’s ability to conduct operations deep behind enemy lines makes it well suited for CSAR.

As a result of the U.S. becoming a party to the 1993 Chemical Weapons Convention, the use of RCA in CSAR has become a significant legal issue. The Convention specifically bans the use of RCA as a “method of warfare.” E.O. 11850, which is still in effect, specifically permits the use of RCA in CSAR. The implementation section of the Senate resolution ratifying the treaty requires that the President not modify E.O. 11850. (S. Exec. Res. 75, Senate Report, s3373 on 24 April 1997, section 2 - conditions (26) RCA) The President, in his certification document, wrote, “the United States is not restricted by the convention in its use of riot control agents in various peacetime and peacekeeping operations. These are situations in which the U.S. is not engaged in the use of force of a scope, duration, and intensity that would trigger the laws of war with respect to U.S. forces.” Despite the fact that CSAR is defensive in nature, the use of RCA in such a case is arguably a method of warfare when used during international armed conflict. Therefore, even though E.O. 11850 is still valid, it is unlikely that the NCA would approve the use of RCA in CSAR during international armed conflict where the law of war is applicable. It may however approve its use for CSAR in peacekeeping or peace enforcement operations.

Counterdrug Activities (CD). (See the chapter on Domestic Operations, this Handbook).

SOF’s participation in CD includes active measures to detect, monitor, and counter the production, trafficking, and use of illegal drugs. In OCONUS CD, SOF possess the cultural and linguistics capabilities to assist foreign governments, largely through training. SOF may also help U.S. and foreign law enforcement agencies with military applications, such as SR, in CD. In CONUS CD, SOF are often used to train and assist local, state and federal law enforcement agencies.

In CD, like other MILOPS, the SOF judge advocate must be sensitive to fiscal issues. Money for CD programs where SOF is involved primarily comes from the Operations and Maintenance (O&M) appropriation. While the funds come from O&M, a specific statutory authorization must be located to support the planned CD. It is not enough that the CD represents a training opportunity in order to justify the expenditure of money for CD. This is because CD involves aid or augmentation of one sort or another to foreign governments or U.S. civilian law enforcement agencies (CLEA), activities that are generally contrary to the proper use of O&M. General statutory authorizations can be found in 10

U.S.C. §§ 371-382 and various Authorization Acts. See § 1004, Nat'l Def. Auth. Act for 1991, Pub. L. 101-510, extended through FY 99 by § 1121, Nat'l Def. Auth. Act for 1995, Pub. L. 103-337. Most SOF OCONUS CD comes in the form of training foreign troops and is funded by way of 10 U.S.C. § 2011, "The Special Forces Exception."

Absent specific Congressional authority otherwise, the Posse Comitatus Act, 18 U.S.C. § 1385, prohibits the direct participation of DoD personnel in law enforcement activities in CONUS. For example, SOF may not be directly involved in searching or seizing contraband or arresting suspects. The act does not prevent DoD personnel from conducting routine training that has the incidentally benefits CLEA. Therefore, it is absolutely critical that all CONUS CD directly relates to the units METL. It is up to the operators to determine their METL, but the judge advocate may become involved in helping the operators determine whether what they are being asked to do comports with their Mission Essential Task List (METL). Legal review of CD is generally conducted by judge advocates assigned to the units that organize DoD involvement, such as JTF-6. However, the SOF judge advocate cannot afford to defer completely to those other organizations because although the legally reviewed mission may be characterized as "legal," it may not comply with SOF CD policies and procedures. The Posse Comitatus Act does not apply overseas as a matter of law. However, SOF may not directly participate in law enforcement overseas as a matter of policy, DoD Dir. 5525.5, absent SECDEF approval. Of course ARNG SOF, acting in a state status, are not affected by the Posse Comitatus Act because they are not federal troops in such a situation.

If SR is to be used in CD, the SOF judge advocate must insure that it does not include the collection of intelligence on U.S. persons in violation of E.O. 12333. (See Chapter 15, Intelligence Law). Collection however, is a term of art and means more than the mere acquisition of information. Collection entails the acquisition and maintenance of information for future use. This issue often arises in conjunction with Posse Comitatus in CONUS based CD ground operations. For example, a SOF team may be asked to establish an SR site at a seemingly deserted airstrip CONUS. They are told to radio in to CLEA when and if planes land at the strip and to record the tail numbers of the aircraft or take pictures of the aircraft. A detachment may be asked to establish an SR site adjacent to a marijuana field in the U.S. and further directed to radio CLEA when anyone enters the field and to take his or her picture. It is easy to see how these activities could be alleged to constitute direct participation in law enforcement and the collection of intelligence.

If information obtained in this fashion is immediately handed over to CLEA, either in the form of real time communication or in the form of undeveloped film, and not stored or maintained in any manner by SOF, then it does not constitute "collection" because there is no storage component. Although it is a METL task to develop film in the field, it should not be done if it involves taking pictures during CONUS CD. There is however, no requirement for SOF to wear blinders. SOF may pass on to CLEA information concerning criminal activities it observes while training. This points out the need to make sure that any activities participated in by SOF in CD are clearly within their METL or it may be characterized as law enforcement rather than as training. If as part of the SR, the team is to conduct an overall terrain reconnaissance, then taking pictures of the zone, including the field in question, would be permitted if it is part of that training mission. However, such a mission would not include the surveillance of persons. If the team begins to target individuals with the camera, it begins to look more like surveillance than zone reconnaissance. The purpose of taking the pictures must be routine training.

Even if legally permissible, the decision to participate in CD has tremendous policy implications. The use of the military in any activity even remotely linked to CONUS law enforcement generates controversies with many. It is even potentially more controversial when SOF is being used. If a young infantryman makes a mistake during CD, it would be easier to explain the circumstances of such a soldier's mistake than it would be to explain a similar mistake made by a seasoned SF NCO. Any CD military application in CONUS creates the possibility of exposure of the unit's activities through the courts and the media. In a criminal defense, which alleges a Posse Comitatus violation, members of SOF could be potentially hauled into court and forced to testify regarding past and future CD ops and techniques used in SR.

Foreign Humanitarian Assistance (HA).

HA is provided by DoS through various economic aid programs. DoD does, however, provide some limited HA. For SOF, this generally is in the form of Humanitarian and Civic Assistance (HCA) authorized by 10 U.S.C. § 401. HCA comes in three varieties. Demining, which will be discussed below, preplanned HCA, and "de minimis" or target of opportunity HCA. There is a clear nexus between a government's ability to provide basic human services to its citizens and its internal security. Insurgencies and organized criminal enterprises are more successful as a general rule in countries where the government either will not or cannot support the populace. Through HA, the U.S. government is able

to assist developing nations provide those much needed services to their citizens. This may result in greater regional stability, which is beneficial to U.S. interests. Moreover, HCA is often the gateway for U.S. forces into areas where access is limited because of diplomatic concerns. There are obvious benefits to SOF in the form of training and in obtaining information regarding counties in their regional area.

For SOF, at the execution level, most problems occur when the teams either exceed the scope of the statute or they leave behind the tools or medicine involved with the HN locals. For example, if an operation calls for a team to repair a medical clinic in a rural area as is authorized by statute, SOF may not buy refrigerators, sterilizers, tables and chairs for the clinic; that is not repair, that is stocking a clinic. That may constitute foreign aid with no nexus to training and no improvement of the SOF readiness skills. Similarly, leaving behind medicine or tools purchased to accomplish an HCA mission would arguably unlawfully augment DoS funds for foreign aid. Leaving DoD purchased property behind where the unit is no longer present means that there is no longer training value to the U.S. Forces involved.

(See generally the chapters on Fiscal Law and Security Assistance and Foreign Assistance., this Handbook.)

Countermining Activities.

Demining is a form of HA. Demining projects may be funded by security assistance funds, 22 U.S.C. § 2765, or by HCA through 10 U.S.C. § 401(e)(5). The focus of this paragraph will be on HCA because it is the form of demining in which SOF most often participates. HCA demining is funded by an annual O&M appropriation known as the Overseas Humanitarian, Disaster and Civic Aid (OHDACA) account. Although the money is appropriated annually, it is available for two years. Because OHDACA is actually a “fenced” pot of money within the general Operations and Maintenance (O&M) account, it is often referred to as an appropriation within an appropriation. Five disaster and humanitarian programs, including § 401 demining, are funded with OHDACA. For FY 99, Congress appropriated \$50,000,000 to OHDACA. Of this amount, Congress indicated its legislative intent, that \$35,000,000 be used for demining. Congress also appropriated \$35,000,000 for the SA demining program for FY 99.

HCA demining includes the detection and clearance of landmines, including activities relating to the furnishing of education, training, and technical assistance with respect to the detection and clearance of landmines. There are however, significant limitations. U.S. forces are not to engage in the physical detection, lifting, or destroying of landmines, unless it is done for the concurrent purpose of supporting a U.S. military operation.

Unlike other HCA however, the assistance is to be provided during military operations with HN forces, which means that it may indirectly or directly benefit HN forces. Moreover, the equipment used in the demining operation may be transferred to the HN.

Security Assistance (SA).

SOF, particularly the Special Forces, are often tasked to deploy Mobile Training Teams (MTTs) overseas to conduct security assistance training. The judge advocate must review the proposed mission in order to ensure that the jurisdictional status of the team members has been addressed. Typically, the mission will be conducted as a Foreign Military Sales (FMS) case under the Arms Export Control Act (AECA). The FMS Letter of Offer and Acceptance (LOA) should set forth the status of the team members while they are in the host country. These personnel will most probably receive the same privileges and immunities as those accorded the administrative and technical staff of the U.S. Embassy pursuant to the Vienna Convention on Diplomatic Relations. Security assistance team members may also be considered part of the United States security assistance office (SAO) located in the host country. The judge advocate should refer to the bilateral agreement between the U.S. and the host country in order to determine these privileges. If neither the LOA nor the SAO addresses the jurisdictional status of U.S. forces, the judge advocate should contact the Security Assistance Training Management Office, Fort Bragg, North Carolina (DSN: 239-9108/1599/5057/9008.)

Although the MTT is responsible to the U.S. military mission in the host country, it may operate autonomously in the field. The team members must be aware of their sensitive, visible mission. For this reason, the judge advocate should thoroughly brief the MTT on the laws and customs of the country to which they are deploying. This briefing is particularly important if team members have not previously deployed to this particular country. The MTT may deploy to a country experiencing internal armed conflict. In this situation, team members must be informed of the AECA (10 U.S.C.

§ 2671c) which prohibits U.S. personnel from performing any duties of a combatant nature, including duties related to training and advising, that may result in their becoming involved in combat activities. (See CJCS MSG DTG 1423587 Feb 91, which prohibits DoD personnel from accompanying Host Nation Forces on actual operations where conflict is imminent.) In addition, guidance with respect to the acceptance of gifts from foreign governments and humanitarian law concerns must be provided.

(See generally the chapter on Security Assistance and Foreign Assistance, this Handbook.)

Peace Operations.

SOF assist in peacekeeping operations, peace enforcement operations, and other military operations in support of diplomatic efforts to establish and maintain peace. (See generally Chapter 23, United Nations and Peace Operations).

Special Activities.

These are activities that are planned and executed so that the role of the United States government is not apparent or acknowledged publicly. Special activities require a Presidential finding and Congressional oversight.